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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: WASHINGTON, D.C.

Date:

APR 18 2008

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Washington, DC, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on January 30, 2007. The matter will be reopened *sua sponte* and the AAO's January 30, 2007 decision will be withdrawn. The appeal will be sustained.

The record reflects that the applicant was born on November 17, 1980 in Ghana. The applicant's father, [REDACTED], became a U.S. citizen upon his naturalization on March 31, 1995, when the applicant was 14 years old. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents were married on February 18, 1978 in Ghana. They were divorced on December 4, 1986 in the Superior Court of the District of Columbia. The applicant was admitted to the United States as a lawful permanent resident on October 7, 1992, when he was 11 years old. The applicant seeks a certificate of U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA).

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1980. The applicant was over 18 on the effective date of the CCA. Section 321 of the former Act, 8 U.S.C. § 1432, is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432, provided, in pertinent part, that:

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased;
or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years;
and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The applicant has established that his father naturalized prior to his 18th birthday, and that he was admitted to the United States as a lawful permanent resident prior to his 18th birthday. The question remains whether the applicant was in the legal custody of his father.

The record includes a copy of the applicant's parents' divorce decree, issued in 1986 by the Superior Court of the District of Columbia. Although the decree does not address the issue of the applicant's custody, it refers to a July 1982 separation agreement entered into by the applicant's parents dealing with such matters as "alimony, maintenance, support, custody of children or property rights." *See* Divorce Decree, dated December 4, 1986, at ¶ 5. The July 1982 agreement, in turn, states, in relevant part, that the applicant's father "will have legal custody" of the applicant while the applicant's mother "will share physical custody." *See* Separation Agreement, dated July 6, 1982, at ¶ 4.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. Upon reconsideration, in light of the 1982 separation agreement recently submitted, the AAO finds that the applicant has met his burden to prove that he was in the legal custody of his father following his parents' divorce. The applicant therefore derived U.S. citizenship upon his father's naturalization on March 31, 1995. Accordingly, the appeal will be sustained.

ORDER: The matter is reopened. The AAO's January 30, 2007 decision is withdrawn.
The appeal is sustained.